

1868-005

Chancery Causes: John R. Pettitt & I v's William Pettitt's admr, & John W. Barlow & ax

Isle of Wight county

other SURNAMES: Pollard,
Eley, Hayden, Bryan, Beavans,
Hays, Phillips, Whitaker,
Gunters, Goodrich

I, William Pettitt, formerly of Halifax County State of North Carolina, now of Isle of Wight County State of Virginia do make and Ordain this instrument of writing to be my last Will and Testament in manner and form as follows to wit:

- Item 1st I give and bequeath unto each of my Eight Children, to wit: Virginia Ann Pettitt, John R Pettitt, Sarah E Pettitt, Benjamin F Pettitt, Lucinda Ann Pettitt, Francis Pollard wife of Elijah Pollard, Rebecca Pettitt, and George Pettitt, the sum of ten Cents & no more.
- Item 2nd I devise and bequeath unto Antonette W. Barlow, wife of John W Barlow of Isle of Wight County State of Virginia, all the rest & residue of my estate, both real and personal, here and in North Carolina, the same to have, hold, and enjoy to her and her heirs forever.
- Item 3rd I hereby revoke and Cancel all Other Wills heretofore by me made in Acknowledgment of this Wherunto I have set my hand and affixed my Seal this 21st day of August in the Year 1867.

William Pettitt (Seal)

The within will and Testament of William Pettitt was signed, sealed and Acknowledged by the testator in the presence of us who were all three present together in the presence of the testator, and by his request. We have Witnessed the same the day & year aforesaid

George T. Clark.

J. T. Savage
Wm. H. Gwaltney

In the County Court of Isle of Wight County Nov. 1867. ^{the County} The Will of William Pitt ^{deceased}
was proved in Court by the Subscribing
Witnesses & ordered to be recorded.
Teste N. P. Young Clerk.

A copy.

Teste N. P. Young Clerk

William Pitt

Will

a copy.

The Commonwealth of Virginia.

To H. B. Bell and James H. Whitaker, Justices of the Peace for the County of Halifax, in the State of North Carolina, Greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining John F. Goodrich, John Bezaus and A. D. Bryant, witnesses in behalf of the plaintiffs, in a suit depending in our Circuit Court for the County of Isle of Wight, wherein John R. Pettit, Benjamin F. Pettit, Virginia Ann Pettit, Leah Pettit, Elijah E. Pollard and Thomas C. Pettit, Martha Lucinda Pettit, Rebecca Pettit and George Pettit (the last three infants by John R. Pettit their mother) are plaintiffs, and Edwin L. Eley Sheriff of Isle of Wight County and administrator with the will annexed of William Pettit deceased, John W. Barlow, and Antoinette V. his wife are defendants, we request and enjoin you, that on such day and such place as you shall appoint, to call and cause to come the witnesses aforesaid before you, and them diligently examine on the Holy Evangelists of Almighty God, and their examination into the said Court distinctly and plainly, without delay, you send and certify enclosed, returning also this Commission.

Witness, A. J. Young, Clerk of our said Court, at the Court House, this 15th day of February 1868, in the 92nd. Year of the Commonwealth.

A. J. Young, Clerk.

Petitt et al.
vs. The Commission
Petitts adm. et al.

Depositions Taken on the 24th day of March
1868 at the Post office, in Enfield, Halifax County,
(and state of North Carolina), between the hours
of 9 A.M. and 6 P.M. of that day, to be
read as evidence for the plaintiffs in a
Chancery cause now pending in the Circuit
Court of Isle of Wight County, Virginia,
wherein John R. Pettit, Benjamin J. Pettit,
Virginia Ann Pettit, Leah Pettit, Elijah E.
Poleard & Francis S. his wife, Martha Lucinda
Pettit, Rebecca Pettit, & George Pettit (the last
three infants by John R. Pettit their next
friend are plaintiffs and James L. Eley
Sheriff of Isle of Wight County, Virginia
and a mor. with the wife annexed of
him Petitt as d. & John W. Barlow and
Antoinette V. his wife, Defendants -
Taken pursuant to the annexed notice
and Commission.

Dempsey L. Bryan being
duly sworn, depose, and say, as is set
forth in the answer to the following
questions.

1st Question by John R. Kelly, plaintiffs'
Attorney.

How old are you - where do you reside -
were you acquainted with John Pettit the
Testator, and if so, how long had you been
thus acquainted with him?

Answer - I am, thirty five years, old, last
birth day - I reside at Enfield, Halifax
County, North Carolina - I may recall

acquainted with the said Wm Pettit, and had
been for eight years.
2^d Question by same.

When did the said Wm Pettit leave
Enfield to go to Virginia?
Answer. About June 1867.

3^d Question. Were you so well acquainted
with the deceased as to know the mental
condition of said Wm Pettit at the time
he left North Carolina, and
if so state whether he was capable
of making a last will & Testament
or not, and generally all you know
about his mental condition?
Answer. At the time he left North
Carolina I was sufficiently well
acquainted with the deceased to
know his mental condition and as to
his capability of making a will - I saw
him very often, talked with him, he was,
very old and childish and was evidently
in his dotage, was full of suspicions of
his family, was given to drink when he
could get it, absent minded, was very
changeable in his mind, he had transacted
no business of moment for a number of
years; and from my knowledge of the
deceased I feel no hesitation in
saying that I consider the deceased
incompetent to make a will when he
left North Carolina, and had been
so incompetent for at least ten
years previous. Signed J. T. Bryson

John Deavans, being duly sworn,
deposes as is set forth below,
1st Question by John R. Kelly Plaintiff
Attorney

How old are you? where
do you reside - were you well
acquainted with Wm Pettit the
deceased, and if so how long had
you been acquainted with him.
Answer.

I shall be sixty two years old in
September next - I reside near
Enfield, Halifax County, North
Carolina; I was well acquainted
with Wm Pettit and had been for
many years - I was a near
neighbor of his.

2^d Question by same.

State what you may know
of his mental capacity at the time he
left North Carolina for Virginia and
for several years before, and all you
may know of his capacity to make a will
during that period -

Answer. I consider that his mind was
greatly impaired for a period from six
to twelve months before he left North
Carolina for Virginia which was in
the Summer of 1867 - On one occasion
he came to me to settle his will which
I did as he requested, this was about the
first of the year 1867; I refused however to
subscribe it as a witness, because I then
considered him incompetent to make a

when he left North Carolina, and
what it had been for some years
previous thereto, and particularly
state whether he was Capable of
making a Last Will & Testament
and sincerely acquiesce in his
mental Capacity to contract.
Answer.

I was frequently at his house
and had good opportunity to observe
him; he had given up the management
of his farm to his son John, and in
walking out with him, occasionally
I discovered that his mind was
fading away as well as his physical
man; that he was changeable in his
conversation suddenly breaking off
from one subject to another - about minutes
and evidently in his sleep - having
no fixed mind about any thing, and
this condition of mind continued to
increase - I consider him incapable
properly to have made a contract
or will relative to the disposition
of his estate - Indeed he had become
almost a second child in his way of
conversation - I should have been
surprised to have ~~an~~ witnessed any
will or contract made by him
believing that he had not sufficient
Capacity to have executed either.
(and further Dependent says not.)
Wm. H. Hays

Wm. Phillips being duly sworn
says, as is set forth below.
1st Question by pt. atty.

How old are you - where do you
reside - were you acquainted with
Wm. Pettit the deceased, & if so, how
long had you been acquainted with
him

Answer.

I am thirty nine years old - live
near Enfield, Halifax County, North
Carolina - I was, once acquainted
with Wm. Pettit the deceased - lived
near him & had known him for
Twenty five years.
2d. Question by same.

State what of perturbation,
you had to know his mental
condition, and whether in your
opinion he has had for several
years or for any other period, suf-
ficient mental capacity to make
a will or other contract to dispose
of property, and generally, all
you know about the same.

Answer.

I live only about half a mile
from deceased's residence, and we very
frequently, I often every day, had frequent
conversations with him - I was in 1863
that I first discovered that his mental
faculties were giving way, when I was
at home on a furlough from the Army;
at the end of the war in 1865, on my

return from the Army - I discovered that
his mind was greatly impaired, and that
it continued to get worse till he went
to Virginia - Frequently in conversation
he would again and again repeat the same
conversation, seemed to be wandering
and having no fixed purpose - His wife
died in Jan'y. 1867 - Some persons thought
he asked me to witness a will for him
which I did, leaving his property to his wife
like & then to his children - After
her death he spoke of making another
will, but I do not know that he did -

I am perfectly satisfied from my
intimate knowledge and acquaintance
with the deceased this way, & manner
that from the death of his wife in
Jan'y 1867 to about June 1869 when he
went to Virginia, he was not capable
of making any will or other disposition
of his property, knowing at the same time
what the free effect might be,

and further deponent said not.
J. J. Phelps

Wm. H. Whitaker being duly
sworn says, as is set forth below.
1st Question by pt. atty.

How old are you - where do you
reside - were you acquainted with
Wm. Pettit decd. and if so, how long
had you been acquainted with him.
Answer - I am forty eight years old.

1

Reside near Infield Halifax County
with Carolina, I was well acquainted
with Mr Pitt, the deceased, lived
within a mile of him, and had
known him nearly all my life,
2^d Question by same.

State, if you can, what his
mental condition was, for several
years, previous to his death, and your
opportunities of knowing, and
whether in your opinion he was
capable, sufficiently, of making
a will or other disposition of his
estate -

Answer:

I lived very near the deceased,
Saw him very often & frequently con-
versed with him - It was, sometime
during the war, that I first discovered
that his mental faculties were failing,
after that I saw him very often, he
frequently had conversations with me
about his business; He said he wanted
his youngest child to have most of his
estate to educate him. I consider from
conversations with him & frequent interviews that
for several months before he went to Virginia
he was not capable of making a will,
(and further statement with not.

W. H. Whitaker

Dr. P. F. Whitaker, being duly sworn
says, as follows.

1st Question. How old are you, and
where do you reside; and were you
acquainted with Wm. Pitt here, and
how long had you been acquainted with
him.

I am fully three years old, live
in Enfield, Halifax County, North Carolina.
I was acquainted with Wm. Pitt and
had seen him my childhood.
2^d Question. Where.

From your knowledge of the
deceased, has his mind become
impaired, or not, and what were
your opportunities of knowing
him. I was never called on to
attend him as a Physician - saw him
occasionally, his mind had become
greatly impaired, tho. at times he
was better than at others. He
never sent for any Physician.

And the deponent says nothing
further.

P. F. Whitaker

Ab. H. Hunter being duly sworn
says as is set forth below.

I am fully three years old, live

near Infield, Halifax County, North
Carolina, and I live about one
mile from Mr. Pettit's Residence
and knew him well.

From my knowledge of his
ways, & conversation, I feel satisfied
in my own mind that the deceased
was far over his ~~words~~ mentally
incapable, to his going to Virginia
incompetent to make a valid will
or other contract disposing of his
property.

And further deponent saith not,
R. H. G. Hunter.

John Derrick being duly sworn
says as is set forth below.

1st Question by Plaintiff's Attorney.

How old are you - were do you
reside - were you acquainted with
Mr. Pettit the deceased, and if so,

how long had you been thus acquainted
Answer.

I am thirty six years old, last day
I reside near Infield, Halifax County,
North Carolina; I was well acquainted
with said deceased I had been for
a number of years.

2d. Question by same.

State, if you can what
the mental capacity of the deceased was,
to make a will or other disposition of his
property, and what your opportunities
for knowing were, (and generally, acc

you know relative to his mental condition.

Answer. I have known the said William
Pettit and his family for the last fourteen
years, as a respectable, enterprising, indu-
trious and virtuous family - Mr. Pettit, if
I mistake not was the oldest man in the
Community - He showed marks of an
impaired mind for a year or more prior
to the time of his death, by his change of
uncommon manner - by absent mindedness -
by unprovoked irritability of temper ap-
proaching very near to insanity - by
abusing his children - without provocation -
by making repeated wills (and destroying
them without any change of circumstances,
to elude such conduct - by talking of being
divorced from his wife ~~without~~^{for} the most
trivial cause - by unscrupulously abusing
his children, even his inoffensive infant
child - and by many other things of a
like import too tedious to mention -

I have lived for several years in about
one mile of Mr. Pettit's residence, and think
I have had his personal presence more
than any, and as the rest of his neighbors,
and I here state that I do not believe
he was in a proper condition, or state of
mind when he left his family, and for
a considerable time before, to make a will
or any sort of disposition of an estate.

He has eight children living, named
as follows - Virginia Ann Pettit - Leah
Pettit - Susan Nancy, now wife of Elijah
E. Pollard - John^R Pettit - Benjamin J.,

Pitt - Lucinda Pitt - Rebecca Pitt -
and George Pitt - the last one being
nine years old last July.

The wife of the deceased was now,
& much younger than her husband died
about 27th January 1867 -

He has no child living names
Sarah, & never heard of his having
any such - Lucinda has no middle
name of "Ann"

On one occasion the deceased said
he put as lief - give me what he heard of,
any one else, but this I refused as I
was sure he hardly knew what he was
talking about -

The children of the deceased, I
both boys & girls, are prudent, & sensible,
& have wrought faithfully with
their father & helped to make an
accumulate the little estate
he had - The estate consists of
a small farm in Hall's Bay, County
North Carolina of about 58 acres,
worth about \$1200 - has on it fair
houses & improvements - his other
estate worth about \$500: -

I heard on several occasions that
he often visited the residence of N. B.
Whitaker & Dorman Parker his former
neighbors, & that he had died after their
death and return home saying that

They were dead - first of the. he had
then for the first time heard of it -

I have heard of his getting lost
near his own residence - within half
a mile of the same - and that in a
hurry along which he had travelled
for many years - his family were
constantly uneasy whenever he went
from home, and I have seen his wife
looking out for him and expressing
great fear that he would not find
the way back when off -

and further regret with not.

John Goodrich

Capt James H. Bullock being duly
duly sworn. says.

I reside in Fairfield,
North Carolina. I knew Gen Pettit
dead for many years before his
death - Early in 1867 I met the
deceased on the road. He stopped
me, and he asked me to write a
will for him, I took out a piece
of paper & took a memorandum
to write it by - when he desired to

leave out a good part of his children
and said he wanted to leave out his wife
because he would not mind him - I
thought he was not right in his mind
and deferred the matter to be decided by him.

to call & see me again, & he came to see
me about a week after to know if I had
done that writing for him, I put him
off, & told him to come in the ~~evening~~ I
let us talk about it, and in conversing
with him. I became satisfied he hadn't
mind enough to make a will I declined
writing it - he never said anything
more about it, tho. I saw him
frequently afterwards. I feel
confident that in several months
before he left North Carolina
he was not capable of making
a will.

and further deponent saith not
— Jas. H. Whitaker

North Carolina
Salisbury County to wit:

We L. B. Bell and Jas. H. Whitaker
Justices of the peace in and for the County of
Salisbury in the State of North Carolina
do certify that the foregoing Depositions
were taken on the day, between the hours,
and at the place, as set forth in the
Caption hereto and pursuant to the
annexed notice of Commission
Given under our hands this
24th March 1868.

L. B. Bell J. P.
— Jas. H. Whitaker

Pettib. 126.
203. 3 Depositions

Pettib. 126.

May 4th. 1868 came to
hand & filed.

To I give & the Sheriff of the County of Isle of Wight & as such
Administrator with the will annexed of William Pelitt
decd, & John W. Barber & Ann Martha D. his wife

Take notice that on the 24th day of March next
between the hours of 9 AM & 6 PM of that day, at the
Post Office in Enfield, Halifax County North Carolina
we shall proceed to take the depositions of John T Goodrich,
John Bevan, & of Bryant & others to be used as evidence
for us in a suit now pending in the Circuit Court for the
County of Isle of Wight in the State of Virginia wherein we
are Plaintiffs & you are Defendants: if from any cause
the taking of said depositions, shall not be commenced,
or being commenced should not be completed on that day,
the taking of the same will be adjourned from time to time
until the said depositions shall be completed -

Given under our hands this 15th day of February 1868 -

John R Pelitt, Benjamin F Pelitt,
Virginia Ann Pelitt, Lech Pelitt
Elijah E Pollard & Frances his wife
Martha Lucinda Pelitt, Rebecca Pelitt
& George Pelitt (the last three infants by
Mrs R Pelitt their next friend
per Mrs R Kelly & C B Hayden
their Attorneys -

I do of Right solemnly to wit:

I C B Hayden a Notary Public for
the county aforesaid in the State of Virginia certify that John
W Chalmers this day personally appeared before me in my said
County & made oath that on the 18th day of February 1868, he
delivered a true copy of the within Notice on the within
named Elean L Ely & under my hand this 19th day of February 1868
C B Hayden

Witness my hand & seal
at the County of Loudoun
this 18th day of February 1868.

John W Chalmers
for E L Ely & Co

Virginia County of Isle of Wight.

In the Clerk's office of the Circuit Court of said county. This day Charles B. Harden attorney for the plaintiffs, appeared before me, A. P. Young Clerk of the said Circuit Court and made oath that John F. Goodrich, John T. Jones and A. D. Boyntun attorneys in behalf of the plaintiffs in a certain suit pending in the Circuit Court of Isle of Wight county, wherein John R. Pettit, Benjamin F. Pettit, Virginia Ann Pettit, Leah Pettit, Elijah C. Pollard & Francis S. his wife, Martha Annida Pettit, Rebecca Pettit & George Pettit (the last three infants by Mrs. R. Pettit their mother) are plaintiffs, and Edmund C.ley Sheriff of Isle of Wight county executor with the will annexed of William Pettit dec'd. Mrs. W. Barlow & A. C. his wife are defendants, are now residents of the state of Virginia

C. B. Harden

Sworn to and subscribed before me the day 15th day of February 1868.

A. P. Young Clerk.

Petit sag.
s. $\frac{1}{2}$ aff. det.
Petit adol. sag.

The Commonwealth of Virginia,

TO THE SHERIFF OF THE COUNTY OF ISLE OF WIGHT—Greeting:

We command you to summon James L. Ely Sheriff of Isle of Wight County and
as such Adminr. with the will annex'd of William Pettit, John W.
Boston & Antoinette W. his wife

to appear on the first Monday in February
next, (being Rule day), at the Clerk's Office, of the Circuit Court for
the County of Isle of Wight, directed to be holden at the Court-house thereof,
to answer the Bill in Chancery of John R. Pettit, Benjamin F.
Pettit, Virginia Ann Pettit, Leah Pettit, Elijah E. Pollard
and Francis S. his wife, and Martha Lucinda Pettit,
Rebecca Pettit and George Pettit (the last three
infants being by John R. Pettit as next friend)
and have then and there this writ.

Witness, Nathaniel D. Young, Clerk of our said Court, this 18th
day of January 1868, and in the 92nd
year of the Commonwealth.

N. D. Young

[A copy to be delivered to each defendant.]

Executed by delivery a true copy
of the within to E. S. Ely & John H.
Barlow on the 3rd January 1868
Miss E. Powell Esq
for E. S. Ely Esq

Pettit & Thurman

or

J. C. C. in City,

Pettit's account, 1868.

to the 1st of Jan. 1868.

Wm. H. Ely Esq

To the Honorable Richard H Baker Judge
of the Circuit Court of Law & Chancery for
the County of Isle of Wight in Chancery sitting,
Humbly complaining sheweth to the Court, your
complainants John R Petitt, Benjamin F Petitt,
Virginia Ann Petitt, Leah Petitt, Elijah E
Pollard & Frances S his wife, Martha Lucinda
Petitt, Rebecca Petitt, & George Petitt, the last
three infants, suing by said John R Petitt as their
next friend - That your said complainants are
with the exception of the said Elijah E Pollard
children and heirs at law of one William
Petitt, late of the County of Hallifax, in the State
of North Carolina, of which County he had been
a resident for more than forty years - That for
the last few years prior to his death, he
had been of unsound mind & memory, incapable
of attending to his business affairs which were
managed by the aforesaid John R Petitt -
That about the first day of July 1867, the said William
Petitt came to the County of Isle of Wight in the
State of Virginia where he had a niece
living, one Antoinette O Barlow (formerly
the wife of Geo W Barlow, at whose house in
said County the said Wm Petitt departed this
life on the day of 1867) - That at the
November term 1867 of the County Court
of the County of Isle of Wight aforesaid, a paper
purporting to be the last will and testament

if filed
it -

of the said W^m Pettit, bearing date the 25th day
of August 1867, was admitted to Probate in
said Court in common form - <sup>without the knowledge of your said complainant
who was not parties to said proceedings of Probate</sup> an official
copy of said writing with certificate of probate
unrecorded is herewith filed, marked & prayed
to be taken as a part of this bill - that said
decedent at the time of his death was about
Eighty years of age - that he left no wife surviv-
ing him - that his sole heirs at law were his
eight children, your aforesaid complainants
except Elijah Pollard who married Frances,
late Pettit a child of said decedent your
aforesaid complainant - that said pretended
will gives to each of said children a legacy of
ten cents, the said ~~Sarah~~, being miscalled
Sarah E., & the said Martha Lucinda, Lucinda
Ann Pettit in the clause bequeathing said legacies.
that said pretended will devises & bequeaths
the residuum of said decedent's estate (consisting
of a tract of land of about 58 acres in the aforesaid
County of Halifax valued at about \$1000.00 -
personal estate amounting to about \$5000.00)
to his niece the said Antoinette O'Brien -
that at the January term of the County Court
of said County of Wigt, the estate of the
said decedent was committed for administra-
tion ~~and~~ the will annexed to ~~the~~ ^{the} said
Ely the Sheriff of said County, as will appear

Exhibit
13

from the certificate of such administration
marked B & herewith filed as a part of this
Bill - that at the time of the execution
of said paper writing purporting the
last will & testament of the said W^m
Petitt, he was as he had been for the four
or five years preceding, of unsound
Mind & memory, and incapable of making
a will - that said paper writing is not
therefore the last will & testament
of the said W^m Petitt - that your
Complainants are informed & so charge
that it is competent to them have an
issue of derisioit vel non directed by this
Court & the said writing declared illegal
& void as the last will & testament of said
decedent, in tender consideration whereof & as
for as much as your Complainants are without
remedy at law & can only be relieved by the aid
of this Honorable Court of Chancery where matters
of this sort are cognizable, to this end your
Complainants pray that the said Edward
Ely, Sheriff of the County of Isle of Wight & as such
administrator with the will annexed of the
said William Petitt & the said John W
Barton & Antoinette & his wife may be made
parties defendant to this bill & be required to
answer the same - that an issue of derisioit
vel non may be directed to try the validity

Kelly & Hayden for

Settled for.

v. Z. Belle &

Settled accord. for.

1868

July, 1868 - Court. 140.

Belle & Belle & Belle
Belle & Belle & Belle
Belle & Belle & Belle

Mar. 1868 - Belle taken
for confessed set for
Belle & Belle & Belle

May 4th. 1868. Dep. 140.

May Term 1868 Dep. 140

of the said paper milking as the will of the said
decedent & if the same should on the trial
of said issue be found not to be the will of
the said decedent the same may be declared
void & that such other & further relief may
be granted as to the court may seem meet &
as may consist with the equity of the case
Your Complainant will ever pray - -

Kelly & Hayden for